



January 20, 2006

SENATE BILL No. 362

DIGEST OF SB 362 (Updated January 17, 2006 2:02 pm - DI 44)

Citations Affected: IC 6-2.5; IC 6-3; IC 6-8.1; noncode.

Synopsis: Collection of delinquent taxes. Provides for biennial renewal of a registered retail merchant's certificate. Provides that the department of state revenue (department) must renew at no additional charge the registered retail merchant's certificate of a retail merchant who is current on the retail merchant's filing and remittance obligations. Prohibits the department from renewing the registered retail merchant's certificate of a retail merchant who is delinquent in remitting sales or use tax. Provides that the department may levy on a person's property held by a financial institution without first obtaining a tax warrant after 10 days have elapsed after the date on which a demand notice is issued. Provides that a county sheriff has 120 days to collect a judgment arising from a tax warrant. (Current law allows a county sheriff to continue collection efforts on the warrant for up to one year after the judgment lien is entered if the taxpayer is making periodic payments in sufficient amounts to satisfy the judgment within one year.) Provides that if an apparent owner of unclaimed property is subject to an outstanding tax warrant, the department may levy against the unclaimed property. Provides that a taxpayer who receives a proposed assessment must file a protest within 30 days after the date the notice is mailed. (Current law allows 60 days.) Provides that a taxpayer must appeal a letter of finding to the tax court within 45 days after the date on which: (1) the letter of finding is mailed, if the taxpayer does not request a rehearing on the letter of finding within 30

(Continued next page)

Effective: July 1, 2006; January 1, 2007.

Ford

January 11, 2006, read first time and referred to Committee on Tax and Fiscal Policy.
January 19, 2006, amended, reported favorably — Do Pass.

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days; or (2) the department of state revenue issues a denial of the taxpayer's timely request for a rehearing on the letter of finding. (Current law allows 180 days after the letter of finding is mailed.) Provides that interest on an excess tax payment that the department of state revenue does not refund or credit against a current or future tax liability within 90 days after: (1) the refund claim is filed; (2) the date the tax payment was due; or (3) the date the tax was paid; whichever is later, accrues interest from the date on which the refund claim is filed. (Current law provides that interest accrues from the later of the date on which the tax payment was due or the tax payment was paid.)

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January 20, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

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SENATE BILL No. 362

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-2.5-8-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 1. (a) A retail
3 merchant may not make a retail transaction in Indiana, unless ~~he the~~
4 **retail merchant** has applied for a registered retail merchant's
5 certificate.
6 (b) A retail merchant may obtain a registered retail merchant's
7 certificate by filing an application with the department and paying a
8 registration fee of twenty-five dollars (\$25) for each place of business
9 listed on the application. The retail merchant shall also provide such
10 security for payment of the tax as the department may require under
11 IC 6-2.5-6-12.
12 (c) The retail merchant shall list on the application the location
13 (including the township) of each place of business where ~~he the retail~~
14 **merchant** makes retail transactions. However, if the retail merchant
15 does not have a fixed place of business, ~~he the retail merchant~~ shall
16 list ~~his the retail merchant's~~ residence as ~~his the retail merchant's~~
17 place of business. In addition, a public utility may list only its principal

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Indiana office as its place of business for sales of public utility commodities or service, but the utility must also list on the application the places of business where it makes retail transactions other than sales of public utility commodities or service.

(d) Upon receiving a proper application, the correct fee, and the security for payment, if required, the department shall issue to the retail merchant a separate registered retail merchant's certificate for each place of business listed on the application. Each certificate shall bear a serial number and the location of the place of business for which it is issued.

(e) If a retail merchant intends to make retail transactions during a calendar year at a new Indiana place of business, ~~he~~ **the retail merchant** must file a supplemental application and pay the fee for that place of business.

(f) A registered retail merchant's certificate is valid for two (2) years after the date the registered retail merchant's certificate is originally issued or renewed. If the retail merchant has filed all returns and remitted all taxes the retail merchant is currently obligated to file or remit, the department shall renew the registered retail merchant's certificate at no cost to the retail merchant.

(g) The department may not renew a registered retail merchant certificate of a retail merchant who is delinquent in remitting sales or use tax.

~~(f)~~ **(h)** A retail merchant engaged in business in Indiana as defined in IC 6-2.5-3-1(c) who makes retail transactions that are only subject to the use tax must obtain a registered retail merchant's certificate before making those transactions. The retail merchant may obtain the certificate by following the same procedure as a retail merchant under subsections (b) and (c), except that the retail merchant must also include on the application:

- (1) the names and addresses of the retail merchant's principal employees, agents, or representatives who engage in Indiana in the solicitation or negotiation of the retail transactions;
- (2) the location of all of the retail merchant's places of business in Indiana, including offices and distribution houses; and
- (3) any other information that the department requests.

~~(g)~~ **(i)** The department may permit an out-of-state retail merchant to collect the use tax. However, before the out-of-state retail merchant may collect the tax, ~~he~~ **the out-of-state retail merchant** must obtain a registered retail merchant's certificate in the manner provided by this section. Upon receiving the certificate, the out-of-state retail merchant becomes subject to the same conditions and duties as an Indiana retail

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1 merchant and must then collect the use tax due on all sales of tangible
 2 personal property that ~~he~~ **the out-of-state retail merchant** knows is
 3 intended for use in Indiana.

4 ~~(h)~~ **(j)** The department shall submit to the township assessor before
 5 July 15 of each year:

6 (1) the name of each retail merchant that has newly obtained a
 7 registered retail merchant's certificate between March 2 of the
 8 preceding year and March 1 of the current year for a place of
 9 business located in the township; and

10 (2) the address of each place of business of the taxpayer in the
 11 township.

12 SECTION 2. IC 6-2.5-8-5 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 5. A certificate
 14 issued under section ~~4~~, 3 or 4 of this chapter is valid so long as the
 15 business or exempt organization is in existence.

16 SECTION 3. IC 6-3-4-8.1 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 8.1. (a) Any entity
 18 that is required to file a monthly return and make a monthly remittance
 19 of taxes under sections 8, 12, 13, and 15 of this chapter shall file those
 20 returns and make those remittances twenty (20) days (rather than thirty
 21 (30) days) after the end of each month for which those returns and
 22 remittances are filed, if that entity's average monthly remittance for the
 23 immediately preceding calendar year exceeds one thousand dollars
 24 (\$1,000).

25 (b) The department may require any entity to make the entity's
 26 monthly remittance and file the entity's monthly return twenty (20) days
 27 (rather than thirty (30) days) after the end of each month for which a
 28 return and payment are made if the department estimates that the
 29 entity's average monthly payment for the current calendar year will
 30 exceed one thousand dollars (\$1,000).

31 **(c) If the department determines that a withholding agent is not**
 32 **withholding, reporting, or remitting an amount of tax in**
 33 **accordance with this chapter, the department may require the**
 34 **withholding agent:**

35 **(1) to make periodic deposits during the reporting period; and**

36 **(2) to file an informational return with each periodic deposit.**

37 ~~(c)~~ **(d)** If a person files a combined sales and withholding tax report
 38 and either this section or IC 6-2.5-6-1 requires the sales or withholding
 39 tax report to be filed and remittances to be made within twenty (20)
 40 days after the end of each month, then the person shall file the
 41 combined report and remit the sales and withholding taxes due within
 42 twenty (20) days after the end of each month.

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~~(d)~~ (e) If the department determines that an entity's:

(1) estimated monthly withholding tax remittance for the current year; or

(2) average monthly withholding tax remittance for the preceding year;

exceeds ten thousand dollars (\$10,000), the entity shall remit the monthly withholding taxes due by electronic fund transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the remittance is due.

~~(e)~~ (f) If an entity's withholding tax remittance is made by electronic fund transfer, the entity is not required to file a monthly withholding tax return.

SECTION 4. IC 6-8.1-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 1. **(a) As used in this section, "letter of finding" includes a supplemental letter of finding.**

~~(a)~~ (b) If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

~~(b)~~ (c) If the person has a surety bond guaranteeing payment of the tax for which the proposed assessment is made, the department shall furnish a copy of the proposed assessment to the surety. The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

~~(c)~~ (d) The notice shall state that the person has ~~sixty (60)~~ **thirty (30)** days from the date the notice is mailed to pay the assessment or to file a written protest. If the person files a protest and requires a hearing on the protest, the department shall:

(1) set the hearing at the department's earliest convenient time; and

(2) notify the person by United States mail of the time, date, and location of the hearing.

~~(d)~~ (e) The department may hold the hearing at the location of its

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choice within Indiana if that location complies with IC 6-8.1-3-8.5.

~~(e)~~ **(f)** No later than sixty (60) days after conducting a hearing on a protest, or after making a decision on a protest when no hearing is requested, the department shall issue a letter of findings and shall send a copy of the letter through the United States mail to the person who filed the protest and to the person's surety, if the surety was notified of the proposed assessment under subsection ~~(a)~~ **(b)**. The department may continue the hearing until a later date if the taxpayer presents additional information at the hearing or the taxpayer requests an opportunity to present additional information after the hearing.

~~(f)~~ **(g)** A person that disagrees with a decision in a letter of finding may request a rehearing not more than thirty (30) days after the date on which the letter of finding is issued by the department. The department shall consider the request and may grant the rehearing if the department reasonably believes that a rehearing would be in the best interests of the taxpayer and the state.

~~(g)~~ **(h)** If a person disagrees with a decision in a letter of finding, the person may appeal the decision to the tax court. However, the tax court does not have jurisdiction to hear an appeal that is filed more than ~~one hundred eighty (180)~~ **forty-five (45)** days after the date on which:

- (1) the letter of finding is issued by the department, **if the person does not make a timely request for a rehearing under subsection (g) on the letter of finding; or**
- (2) **the department issues a denial of the person's timely request for a rehearing under subsection (g) on the letter of finding.**

~~(h)~~ **(i)** The tax court shall hear an appeal under subsection ~~(g)~~ **(h)** de novo and without a jury. The tax court may do the following:

- (1) Uphold or deny any part of the assessment that is appealed.
- (2) Assess the court costs in a manner that the court believes to be equitable.
- (3) Enjoin the collection of a listed tax under IC 33-26-6-2.

~~(i)~~ **(j)** The department shall demand payment, as provided in IC 6-8.1-8-2(a), of any part of the proposed tax assessment, interest, and penalties that it finds owing because:

- (1) the person failed to properly respond within the ~~sixty (60)~~ **thirty (30)** day period;
- (2) the person requested a hearing but failed to appear at that hearing; or
- (3) after consideration of the evidence presented in the protest or hearing, the department finds that the person still owes tax.

~~(j)~~ **(k)** The department shall make the demand for payment in the

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manner provided in IC 6-8.1-8-2.

~~(k)~~ **(l)** Subsection ~~(a)~~ **(b)** does not apply to a motor carrier fuel tax return.

SECTION 5. IC 6-8.1-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 1. (a) This subsection does not apply to the disclosure of information concerning a conviction on a tax evasion charge. Unless in accordance with a judicial order or as otherwise provided in this chapter, the department, its employees, former employees, counsel, agents, or any other person may not divulge the amount of tax paid by any taxpayer, terms of a settlement agreement executed between a taxpayer and the department, investigation records, investigation reports, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return, except to:

(1) members and employees of the department;

(2) the governor;

(3) the attorney general or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of the law relating to any of the listed taxes; or

(4) any authorized officers of the United States;

when it is agreed that the information is to be confidential and to be used solely for official purposes.

(b) The information described in subsection (a) may be revealed upon the receipt of a certified request of any designated officer of the state tax department of any other state, district, territory, or possession of the United States when:

(1) the state, district, territory, or possession permits the exchange of like information with the taxing officials of the state; and

(2) it is agreed that the information is to be confidential and to be used solely for tax collection purposes.

(c) The information described in subsection (a) relating to a person on public welfare or a person who has made application for public welfare may be revealed to the director of the division of family and children, resources, and to any county director of a county office of family and children located in Indiana, upon receipt of a written request from either director for the information. The information shall be treated as confidential by the directors. In addition, the information described in subsection (a) relating to a person who has been designated as an absent parent by the state Title IV-D agency shall be made available to the state Title IV-D agency upon request. The information shall be subject to the information safeguarding provisions

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of the state and federal Title IV-D programs.

(d) The name, address, Social Security number, and place of employment relating to any individual who is delinquent in paying educational loans owed to an institution of higher education may be revealed to that institution if it provides proof to the department that the individual is delinquent in paying for educational loans. This information shall be provided free of charge to approved institutions of higher learning (as defined by IC 20-12-21-3(2)). The department shall establish fees that all other institutions must pay to the department to obtain information under this subsection. However, these fees may not exceed the department's administrative costs in providing the information to the institution.

(e) The information described in subsection (a) relating to reports submitted under IC 6-6-1.1-502 concerning the number of gallons of gasoline sold by a distributor, and IC 6-6-2.5 concerning the number of gallons of special fuel sold by a supplier and the number of gallons of special fuel exported by a licensed exporter or imported by a licensed transporter may be released by the commissioner upon receipt of a written request for the information.

(f) The information described in subsection (a) may be revealed upon the receipt of a written request from the administrative head of a state agency of Indiana when:

(1) the state agency shows an official need for the information; and

(2) the administrative head of the state agency agrees that any information released will be kept confidential and will be used solely for official purposes.

(g) The name and address of retail merchants, including township, as specified in ~~IC 6-2.5-8-1(h)~~ **IC 6-2.5-8-1(j)** may be released solely for tax collection purposes to township assessors.

(h) The department shall notify the appropriate innkeepers' tax board, bureau, or commission that a taxpayer is delinquent in remitting innkeepers' taxes under IC 6-9.

(i) All information relating to the delinquency or evasion of the motor vehicle excise tax may be disclosed to the bureau of motor vehicles in Indiana and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.

(j) All information relating to the delinquency or evasion of commercial vehicle excise taxes payable to the bureau of motor vehicles in Indiana may be disclosed to the bureau and may be disclosed to another state, if the information is disclosed for the

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purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

(k) All information relating to the delinquency or evasion of commercial vehicle excise taxes payable under the International Registration Plan may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

(l) This section does not apply to:

- (1) the beer excise tax (IC 7.1-4-2);
- (2) the liquor excise tax (IC 7.1-4-3);
- (3) the wine excise tax (IC 7.1-4-4);
- (4) the hard cider excise tax (IC 7.1-4-4.5);
- (5) the malt excise tax (IC 7.1-4-5);
- (6) the motor vehicle excise tax (IC 6-6-5);
- (7) the commercial vehicle excise tax (IC 6-6-5.5); and
- (8) the fees under IC 13-23.

(m) The name and business address of retail merchants within each county that sell tobacco products may be released to the division of mental health and addiction and the alcohol and tobacco commission solely for the purpose of the list prepared under ~~IC 6-2.5-6-14.~~ **IC 6-2.5-6-14.2.**

SECTION 6. IC 6-8.1-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 2. (a) Except as provided in IC 6-8.1-5-3, the department must issue a demand notice for the payment of a tax and any interest or penalties accrued on the tax, if a person files a tax return without including full payment of the tax or if the department, after ruling on a protest, finds that a person owes the tax before the department issues a tax warrant. The demand notice must state the following:

- (1) That the person has ten (10) days from the date the department mails the notice to either pay the amount demanded or show reasonable cause for not paying the amount demanded.
- (2) The statutory authority of the department for the issuance of a tax warrant.
- (3) The earliest date on which a tax warrant may be filed and recorded.
- (4) The statutory authority for the department to levy against a person's property that is held by a financial institution.**
- ~~(4)~~ **(5) The remedies available to the taxpayer to prevent the filing and recording of the judgment.**

If the department files a tax warrant in more than one (1) county, the department is not required to issue more than one (1) demand notice.

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(b) If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may:

(1) levy against a person's property that is held by a financial institution under section 8(a) of this chapter; and

(2) issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable.

When the department issues a tax warrant, a collection fee of ten percent (10%) of the unpaid tax is added to the total amount due.

(c) When the department issues a tax warrant, it may not file the warrant with the circuit court clerk of any county in which the person owns property until at least twenty (20) days after the date the demand notice was mailed to the taxpayer. The department may also send the warrant to the sheriff of any county in which the person owns property and direct the sheriff to file the warrant with the circuit court clerk:

(1) at least twenty (20) days after the date the demand notice was mailed to the taxpayer; and

(2) no later than five (5) days after the date the department issues the warrant.

(d) When the circuit court clerk receives a tax warrant from the department or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record, listing the following:

(1) The name of the person owing the tax.

(2) The amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable.

(3) The date the warrant was filed with the clerk.

(e) When the entry is made, the total amount of the tax warrant becomes a judgment against the person owing the tax. The judgment creates a lien in favor of the state that attaches to all the person's interest in any:

(1) chose in action in the county; and

(2) real or personal property in the county;

excepting only negotiable instruments not yet due.

(f) A judgment obtained under this section is valid for ten (10) years from the date the judgment is filed. The department may renew the judgment for additional ten (10) year periods by filing an alias tax warrant with the circuit court clerk of the county in which the judgment previously existed.

(g) A judgment arising from a tax warrant in a county may be

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released by **the department**:

(1) ~~the department or by the county sheriff~~ after the judgment, including all accrued interest to the date of payment, has been fully satisfied; or

(2) ~~the department~~ if the department determines that the tax assessment or the issuance of the tax warrant was in error.

(h) If the department determines that the filing of a tax warrant was in error, the department shall mail a release of the judgment to the taxpayer and the circuit court clerk of each county where the warrant was filed. The department shall mail the release as soon as possible but no later than seven (7) days after:

(1) the determination by the department that the filing of the warrant was in error; and

(2) the receipt of information by the department that the judgment has been recorded under subsection (d).

(i) If the department determines that a judgment described in subsection (h) is obstructing a lawful transaction, the department shall mail a release of the judgment to the taxpayer and the circuit court clerk of each county where the judgment was filed immediately upon making the determination.

(j) A release issued under subsection (h) or (i) must state that the filing of the tax warrant was in error. Upon the request of the taxpayer, the department shall mail a copy of a release issued under subsection (h) or (i) to each major credit reporting company located in each county where the judgment was filed.

(k) The commissioner shall notify each state agency or officer supplied with a tax warrant list of the issuance of a release under subsection (h) or (i).

(l) If the sheriff collects the full amount of a tax warrant, the sheriff shall disburse the money collected in the manner provided in section 3(c) of this chapter. ~~and then release the judgment~~. If a judgment has been partially or fully satisfied by a person's surety, the surety becomes subrogated to the department's rights under the judgment. ~~and the sheriff may not release the judgment until the surety's rights under the judgment have been satisfied by the person~~. If a sheriff releases a judgment:

(1) before the judgment is fully satisfied;

(2) before the sheriff has properly disbursed the amount collected;

or

(3) after the sheriff has returned the tax warrant to the department; the sheriff commits a Class B misdemeanor and is personally liable for the part of the judgment not remitted to the department.

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SECTION 7. IC 6-8.1-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 3. (a) The county sheriff of a county shall attempt to levy on and collect a judgment arising from a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment lien is entered, unless the sheriff is relieved of that duty at an earlier time by the department. The sheriff's authority to collect the warrant exists only while the sheriff holds the tax warrant, and if the sheriff surrenders the warrant to the department for any reason the sheriff's authority to collect that tax warrant ceases. During the period that the sheriff has the duty to collect a tax warrant, the sheriff shall collect from the person owing the tax, an amount equal to the amount of the judgment lien plus the accrued interest to the date of the payment. Subject to subsection (b), the sheriff shall make the collection by garnisheeing the person's wages and by levying on and selling any interest in property or rights in any chose in action that the person has in the county. The Indiana laws which provide relief for debtors by exempting certain property from levy by creditors do not apply to levy and sale proceedings for judgments arising from tax warrants.

(b) A sheriff shall sell property to satisfy a tax warrant in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale. A sheriff may engage an auctioneer to advertise a sale and to conduct a public auction, unless the person being levied files an objection with the clerk of the circuit or superior court having the tax warrant within five (5) days of the day that the sheriff informs the person of the person's right to object. The advertising conducted by the auctioneer is in addition to any other notice required by law, and shall include a detailed description of the property to be sold. When an auctioneer is engaged under this subsection and the auctioneer files a verified claim with the clerk of the circuit or superior court with whom the tax warrant is filed, the sheriff may pay the reasonable fee and reasonable expenses of the auctioneer from the gross proceeds of the sale before other expenses and the judgment arising from the tax warrant are paid. As used in this section, "auctioneer" means an auctioneer licensed under IC 25-6.1.

(c) The sheriff shall deposit all amounts that the sheriff collects under this section, including partial payments, into a special trust account for judgments collected that arose from tax warrants. On or before the fifth day of each month the sheriff shall disburse the money in the tax warrant judgment lien trust account in the following order:

- (1) The sheriff shall pay the department the part of the collections that represents taxes, interest, and penalties.

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(2) The sheriff shall pay the county treasurer and the clerk of the circuit or superior court the part of the collections that represents their assessed costs.

(3) Except as provided in subdivision (4), the sheriff shall keep the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

(4) If the sheriff has entered a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

The department shall establish the procedure for the disbursement of partial payments so that the intent of this section is carried out.

(d) After the period described in subsection (a) has passed, the sheriff shall return the tax warrant to the department. ~~However, if at the end of this period the sheriff is in the process of collecting the judgment arising from a tax warrant in periodic payments of sufficient size that the judgment will be fully paid within one (1) year after the date the judgment was filed; the sheriff may keep the tax warrant and continue collections. When the tax warrant is returned, the department may exercise its collection powers alone; or it may allow the sheriff to continue collections in conjunction with the department. If the department and the sheriff engage in simultaneous collection efforts, the sheriff may retain for disbursement under subsection (c) only the part of the ten percent (10%) collection fee that is applicable to the part of the collections for which the sheriff is responsible. The department shall retain the rest of the collection fee.~~

(e) Notwithstanding any other provision of this chapter, the department may order a sheriff to return a tax warrant at any time, if the department feels that action is necessary to protect the interests of the state.

(f) This subsection applies only to the sheriff of a county having a consolidated city or a second class city. In such a county, the ten percent (10%) collection fee added under section 2(b) of this chapter shall be divided as follows:

(1) The sheriff may retain for disbursement under subsection (c) forty thousand dollars (\$40,000), plus one-fifth (1/5) of any fees exceeding that forty thousand dollar (\$40,000) amount.

(2) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the sheriff's department's pension trust fund.

(3) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the county general

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SECTION 8. IC 6-8.1-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 8. **(a) After ten (10) days have elapsed after the date on which a demand notice is issued under section 2(a) of this chapter, the department may levy upon the property of the taxpayer that is held by a financial institution by sending a claim to the financial institution. Upon receipt of a claim under this subsection, the financial institution shall surrender the taxpayer's property to the department. If the value of the taxpayer's property exceeds the amount owed to the state by the taxpayer, the financial institution shall surrender the taxpayer's property in an amount equal to the amount owed. After receiving the department's notice of levy, the financial institution shall place a sixty (60) day hold on or restriction on the withdrawal of funds the taxpayer has on deposit or subsequently deposits, in an amount not to exceed the amount owed.**

(b) After a tax warrant becomes a judgment under section 2 of this chapter or a tax warrant is returned uncollected to the department under section 3 of this chapter, the department may take any of the following actions without judicial proceedings:

(1) The department may levy upon the property of the taxpayer that is held by a financial institution by sending a claim to the financial institution. Upon receipt of a claim under this subdivision, the financial institution shall surrender to the department the taxpayer's property. If the taxpayer's property exceeds the amount owed to the state by the taxpayer, the financial institution shall surrender the taxpayer's property in an amount equal to the amount owed. After receiving the department's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of funds the taxpayer has on deposit or subsequently deposits, in an amount not to exceed the amount owed.

(2) (1) The department may garnish the accrued earnings and wages of a taxpayer by sending a notice to the taxpayer's employer. Upon receipt of a notice under this subdivision, an employer shall garnish the accrued earnings and wages of the taxpayer in an amount equal to the full amount that is subject to garnishment under IC 24-4.5-5. The amount garnished shall be remitted to the department. The employer is entitled to a fee in an amount equal to the fee allowed under IC 24-4.5-5-105(5). However, the fee shall be borne entirely by the taxpayer.

(3) (2) The department may levy upon and sell property and may:

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1 (A) take immediate possession of the property and store it in
 2 a secure place; or
 3 (B) leave the property in the custody of the taxpayer;
 4 until the day of the sale. The department shall provide notice of
 5 the sale in one (1) newspaper, as provided in IC 5-3-1-2. If the
 6 property is left in the custody of the taxpayer, the department may
 7 require the taxpayer to provide a joint and several delivery bond,
 8 in an amount and with a surety acceptable to the department. At
 9 any time before the sale, any owner or part owner of the property
 10 may redeem the property from the judgment by paying the
 11 department the amount of the judgment. The proceeds of the sale
 12 shall be applied first to the collection expenses and second to the
 13 payment of the delinquent taxes and penalties. Any balance
 14 remaining shall be paid to the taxpayer.

15 SECTION 9. IC 6-8.1-8-14 IS ADDED TO THE INDIANA CODE
 16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 17 JANUARY 1, 2007]: **Sec. 14. The commissioner may determine that**
 18 **an outstanding liability for taxes, interest, penalties, collection fees,**
 19 **sheriff's costs, clerk's costs, or fees established under section 4(b)**
 20 **of this chapter is uncollectible. However, any lien created by the**
 21 **operation of section 2(e) of this chapter survives the**
 22 **commissioner's determination, subject to section 2 of this chapter.**

23 SECTION 10. IC 6-8.1-8-15 IS ADDED TO THE INDIANA CODE
 24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 25 JANUARY 1, 2007]: **Sec. 15. (a) As used in this section, "apparent**
 26 **owner" has the meaning set forth in IC 32-34-1-4.**

27 **(b) As used in this section, "unclaimed property" has the**
 28 **meaning set forth in IC 32-34-1-21.**

29 **(c) If an apparent owner of unclaimed property is subject to a**
 30 **tax warrant issued under IC 6-8.1-8-2, the department may levy on**
 31 **the unclaimed property by filing a claim with the attorney general**
 32 **in accordance with the procedures described in IC 32-34-1-36.**

33 SECTION 11. IC 6-8.1-9-2 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JANUARY 1, 2007]: **Sec. 2. (a) If the**
 35 **department finds that a person has paid more tax for a taxable year than**
 36 **is legally due, the department shall apply the amount of the excess**
 37 **against any amount of that same tax that is assessed and is currently**
 38 **due. The department may then apply any remaining excess against any**
 39 **of the listed taxes that have been assessed against the person and that**
 40 **are currently due. If any excess remains after the department has**
 41 **applied the overpayment against the person's tax liabilities, the**
 42 **department shall either refund the amount to the person or, at the**

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person's request, credit the amount to the person's future tax liabilities.

(b) If a court determines that a person has paid more tax for a taxable year than is legally due, the department shall refund the excess amount to the person.

(c) An excess tax payment that is not refunded or credited against a current or future tax liability within ninety (90) days after the date the refund claim is filed, the date the tax payment was due, or the date the tax was paid, whichever is latest, accrues interest from the date the ~~tax payment was due or the date the tax was paid, whichever~~ **refund claim is later filed** at the rate established under IC 6-8.1-10-1 until a date, determined by the department, that does not precede by more than thirty (30) days, the date on which the refund or credit is made.

(d) As used in subsection (c), "refund claim" includes an amended return that indicates an overpayment of tax.

SECTION 12. IC 6-8.1-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 3. This chapter does not apply to refund claims made for gasoline taxes under IC 6-6-1.1, special fuel taxes under IC 6-6-2.5, ~~or motor carrier fuel taxes under IC 6-6-4.1-7,~~ or the motor vehicle excise tax (excluding interest and penalties) under IC 6-6-5.

SECTION 13. [EFFECTIVE JULY 1, 2006] (a) ~~IC 6-2.5-8-1, as amended by this act, applies to all registered retail merchant's certificates renewed after December 31, 2006, regardless of when the applicant applied to the department of state revenue to have the certificate renewed.~~

(b) All registered retail merchant's certificates issued by the department of state revenue before December 1, 2006, expire on December 31, 2006. All registered retail merchant's certificates issued by the department of state revenue after November 30, 2006, and before January 1, 2007, expire on December 31, 2008. However, to spread the workload of renewing registered retail merchant's certificates throughout a state fiscal year, the department of state revenue may establish a staggered renewal schedule, delaying the expiration date that would otherwise apply under this SECTION to a certificate until the expiration date set by the department of state revenue. The department of state revenue may not delay the expiration of a certificate under this subsection for more than one (1) year.

(c) To carry out this act, the department of state revenue may adopt temporary rules in the manner provided for the adoption, filing, and publication of emergency rules under IC 4-22-2-37.1. A temporary rule adopted under this subsection expires on the

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- 1 **earliest of the following:**
- 2 **(1) The date that another temporary rule is adopted under**
- 3 **this subsection to replace the previously adopted temporary**
- 4 **rule.**
- 5 **(2) The date that a permanent rule is adopted under IC 4-22-2**
- 6 **to replace a temporary rule.**
- 7 **(3) January 1, 2009.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 362, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 17, after "issued" delete "." and insert "**or renewed.**".

Page 3, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 2. IC 6-2.5-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 5. A certificate issued under section ~~+~~ 3 or 4 of this chapter is valid so long as the business or exempt organization is in existence."

Page 4, between lines 10 and 11, begin a new paragraph and insert:

"SECTION 4. IC 6-8.1-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 1. **(a) As used in this section, "letter of finding" includes a supplemental letter of finding.**

~~(a)~~ **(b)** If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

~~(b)~~ **(c)** If the person has a surety bond guaranteeing payment of the tax for which the proposed assessment is made, the department shall furnish a copy of the proposed assessment to the surety. The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

~~(c)~~ **(d)** The notice shall state that the person has ~~sixty (60)~~ **thirty (30)** days from the date the notice is mailed to pay the assessment or to file a written protest. If the person files a protest and requires a hearing on the protest, the department shall:

- (1) set the hearing at the department's earliest convenient time; and
- (2) notify the person by United States mail of the time, date, and location of the hearing.

~~(d)~~ **(e)** The department may hold the hearing at the location of its choice within Indiana if that location complies with IC 6-8.1-3-8.5.

~~(e)~~ **(f)** No later than sixty (60) days after conducting a hearing on a

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protest, or after making a decision on a protest when no hearing is requested, the department shall issue a letter of findings and shall send a copy of the letter through the United States mail to the person who filed the protest and to the person's surety, if the surety was notified of the proposed assessment under subsection ~~(a)~~ **(b)**. The department may continue the hearing until a later date if the taxpayer presents additional information at the hearing or the taxpayer requests an opportunity to present additional information after the hearing.

~~(f)~~ **(g)** A person that disagrees with a decision in a letter of finding may request a rehearing not more than thirty (30) days after the date on which the letter of finding is issued by the department. The department shall consider the request and may grant the rehearing if the department reasonably believes that a rehearing would be in the best interests of the taxpayer and the state.

~~(g)~~ **(h)** If a person disagrees with a decision in a letter of finding, the person may appeal the decision to the tax court. However, the tax court does not have jurisdiction to hear an appeal that is filed more than ~~one hundred eighty (180)~~ **forty-five (45)** days after the date on which:

- (1) the letter of finding is issued by the department, **if the person does not make a timely request for a rehearing under subsection (g) on the letter of finding; or**
- (2) **the department issues a denial of the person's timely request for a rehearing under subsection (g) on the letter of finding.**

~~(h)~~ **(i)** The tax court shall hear an appeal under subsection ~~(g)~~ **(h)** de novo and without a jury. The tax court may do the following:

- (1) Uphold or deny any part of the assessment that is appealed.
- (2) Assess the court costs in a manner that the court believes to be equitable.
- (3) Enjoin the collection of a listed tax under IC 33-26-6-2.

~~(i)~~ **(j)** The department shall demand payment, as provided in IC 6-8.1-8-2(a), of any part of the proposed tax assessment, interest, and penalties that it finds owing because:

- (1) the person failed to properly respond within the ~~sixty (60)~~ **thirty (30)** day period;
- (2) the person requested a hearing but failed to appear at that hearing; or
- (3) after consideration of the evidence presented in the protest or hearing, the department finds that the person still owes tax.

~~(j)~~ **(k)** The department shall make the demand for payment in the manner provided in IC 6-8.1-8-2.

~~(k)~~ **(l)** Subsection ~~(a)~~ **(b)** does not apply to a motor carrier fuel tax

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return."

Page 12, between lines 39 and 40, begin a new paragraph and insert:

"SECTION 9. IC 6-8.1-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 2. (a) If the department finds that a person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due. The department may then apply any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due. If any excess remains after the department has applied the overpayment against the person's tax liabilities, the department shall either refund the amount to the person or, at the person's request, credit the amount to the person's future tax liabilities.

(b) If a court determines that a person has paid more tax for a taxable year than is legally due, the department shall refund the excess amount to the person.

(c) An excess tax payment that is not refunded or credited against a current or future tax liability within ninety (90) days after the date the refund claim is filed, the date the tax payment was due, or the date the tax was paid, whichever is latest, accrues interest from the date the ~~tax payment was due or the date the tax was paid; whichever refund claim is later filed~~ at the rate established under IC 6-8.1-10-1 until a date, determined by the department, that does not precede by more than thirty (30) days, the date on which the refund or credit is made.

(d) As used in subsection (c), "refund claim" includes an amended return that indicates an overpayment of tax."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 362 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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